N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/03/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.226 of 1997

V.P.R.College Beedi Company
rep. by its Partner
V.P.Thangavel. .. Petitioner

-Vs-

1. Union of India
rep. by its Secretary
Department of Ministry of Labour
New Delhi.

2. Deputy Regional Director
Employees' State Insurance Corporation
Sub Regional Office
No.333, Cross Cut Road
Coimbatore-641 012. .. Respondents

Petition under Article 226 of the Constitution of India for the issue of a writ of Declaration as stated therein.

For petitioner : Mr.T.L.Ram Mohan
Senior Advocate
for Mr.S.Subbiah

For respondent-1 : Mr.R.Viduthalai
Sr. Central Govt. Counsel

For respondent-2: Ms.Jayakumari
for Mrs.Radha Srinivasan

:ORDER

Heard Mr.T.L.Ram Mohan, senior counsel appearing for the petitioner. As there was no representation on behalf of the first respondent, this Court was constrained to direct Mr.R.Viduthalai, learned Senior Central Government Standing Counsel, to take notice on behalf of the first respondent and to appear on behalf of the first respondent. Heard Ms.Jayakumari, appearing on behalf of the second respondent.

2. The petitioner, an employer within the meaning of the Employees'

State Insurance Act, 1948, who is engaged in producing beedies, alleging that the workers employed in his factory are governed by the provisions of:

i. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
ii. The Beedi Workers Welfare Cess Act, 1976 and Rules, 1977;
iii. The Beedi Workers Welfare Fund Act, 1976; and
iv. The Beedi Workers Welfare Fund Act, 1978,

seeks the issue of a writ of Declaration, declaring that the provisions of Employees' State Insurance Act No.XXXIV of 1948 will not apply to the establishments and workers already covered under the Beedi and Cigar Workers (Conditions of Employment) Act No.XXXII of 1966, the Beedi Workers Welfare Cess Act No.LVI of 1976 and the Beedi Workers Welfare Fund Act No.LXII of 1976, and the Rules framed thereunder.

3. According to Mr.T.L.Ram Mohan, learned senior counsel appearing for the petitioner, since the interest of the beedi workers working in the petitioner's factory are still protected under the statutes, referred to as (i) to (iv) above, there is no need either for the workers or for the Management to contribute under the Employees' State Insurance Act, 1948. Hence, the demand of contribution from the petitioner, made under the provisions of the Employees' State Insurance Act, 1948, is unsustainable in law, as otherwise, the beedi workers would be getting the benefits of both the enactments, and the petitioneremployer would be bound to make double contribution.

4. Per contra, Mr.R.Viduthalai, learned Senior Central Government Standing Counsel, appearing for the first respondent, and Ms. Jayakumari, learned counsel appearing for the second respondent, contend that the provisions of the Employees' State Insurance Act, 1948, being a social welfare Legislation similar to Employees' Provident Fund Act, the beedi workers are entitled to have the benefits of contribution under the Employees' State Insurance Act, 1948, as in the case of Employees' Provident Fund Act, as held in M/s.P.M.PATEL & SONS V. UNION OF INDIA reported in AIR 1987 SC 447. Alternatively, it is contended that it may not be proper for this Court to exercise its powers under Article 226 of the Constitution of India to decide as to the applicability of the provisions of the Employees' State Insurance Act, 1948, particularly when the Employees' Insurance Court is empowered to decide as to the applicability of the provisions of Sections 74 and 75 of the Employees' State Insurance Act, 1948.

5. In this connection, Mr.R.Viduthalai, learned Senior Central Government Standing Counsel, relied upon:
i. the decision of a Constitution Bench of the Apex Court in BASANT KUMAR V. EAGLE ROLLING MILLS reported in AIR 1964 SC 1260;
ii. the decision of this Court made by S.Ramalingam,J. dated 9.7.199 0 made in W.P.No.9196 of 1982, etc. (V.ABDUL JABAR SAHIB AND SONS, GOAT MARK BEEDI, VELLORE V. THE STATE OF TAMIL NADU & 2 OTHERS)
iii. the decision of the Apex Court in E.S.I.C. V. F.FIBRE BANGALORE P.

LTD. reported in 1997 (II) LLJ 739 = AIR 1997 SC 244;
iv. the decision of this Court in THE E.S.I. V. T.O.D.H.W.C.S. SOCIETY reported in 1997 (II) LLJ 176;
v. the decision of a Division Bench of the Rajasthan High Court, in ALL INDIA ITDC EMPLOYEES' UNION V. E.S.I.C. reported in 2002 (III) LLJ 917.

6. I have bestowed my careful consideration to the submissions of both sides.

7. The issues that were raised between the parties, which arise for my consideration in this writ petition are:
(i) whether the provisions of the Employees' State Insurance Act, 19 48, are applicable to the beedi workers? and
(ii) whether this Court, by exercising the powers conferred under Article 226 of the Constitution of India, can decide as to the applicability of the provisions of the Employees' State Insurance Act, 1948, to the beedi workers working in the petitioner’s factory?

8. It is true that the provisions of the Employees' State Insurance Act, 1948, being a welfare Legislation, are applicable to the beedi workmen employed under the petitioner's factory, as that of the Employees' Provident Fund Act, as held in M/s.P.M.PATEL & SONS V. UNION OF INDIA reported in AIR 1987 SC 447 as the Employees' State Insurance Act, 1948, is intended to provide certain benefits to the employees in the case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto.

9. Section 74 of the Employees' State Insurance Act, 1948 provides for constitution of an Employees’ Insurance Court by the State Government, by a notification in the Official Gazette, and Section 75 of the said Act deals

with the matters to be decided by the Employees’ Insurance Court. A reference to Section 75(1) is relevant to be mentioned, to decide the issue in question:
“Section 75:

Matters to be decided by the Employees' Insurance Court.

(1)If any question or dispute arises as to -

(a)whether any person is an employee within the meaning of this Act or

whether he is liable to pay the employee's contribution, or

(b)the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c)the rate of contribution payable by a principal employer in respect of any employee, or

(d)the person who is or was the principal employer in respect of any employee, or

(e)the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55A on a review of any payment of dependants' benefits, or

(f)(omitted)

(g)any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act,

such question or dispute subject to the provisions of sub-section (2 A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act. "

10. In my considered opinion, for the purpose of deciding whether the provisions of the Employees' State Insurance Act, 1948, is applicable to the case of the petitioner-employer is a relevant question to be decided, along with the question whether the beedi workers in question are employees within the provisions of the Employees' State Insurance Act, 1948, which directly comes within the purview of Section 75 (1)(a) of the Employees' State Insurance Act, 1948, and therefore, the issue could be decided under Section 75(1)(a) and (b) of the Employees' State Insurance Act, 1948. Only then, the corresponding issue, as to who is the principal employer, and the person who is or was the principal employer in respect of the beedi workers working under him, as mentioned in Section 75(1)(d) of the Employees' State Insurance Act, 1948, could be decided by this Court.

11. Under Section 75(1)(a), the Employees' Insurance Court is empowered to decide whether any person is an employee within the meaning of the Employees' State Insurance Act, 1948 or whether he is liable to pay the employee's contribution. If a person is thus decided as an employee under the Employees' State Insurance Act, 1948, then, the rate of wage or average daily wage of an employee for the purpose of the Act, could be decided as per Section 75(1)(b) of the Act, and consequently, the rate of contribution payable by the principal employer in respect of any employee, and the person who is or was the principal employer in respect of any employee, are to be decided by the Employees' Insurance Court under Section 75(1)(c) and (d) of the Employees' State Insurance Act, 1948 therein.

12. A plain reading of Section 75(1) of the Employees' State Insurance Act, 1948, makes it clear that the Employees' Insurance Court, by exercising the powers conferred under Section 75(1)(a),(b),(c) and (d) of the Employees' State Insurance Act, 1948, collectively, is empowered to decide even as to the applicability of the Act also. In addition to that, as rightly pointed out by Mr.R.Viduthalai, learned Senior Central Government Standing

Counsel, Section 75(1)(g) of the Act further strengthens the jurisdiction of the Employees' Insurance Court to enlarge its power to go into the applicability of the provisions of the Employees' State Insurance Act, 1948 also, as the Employees' Insurance Court is empowered to decide any question or dispute arising in respect of any other matter, which is in dispute between the principal employer and the E.S.I. Corporation, and holds an exclusive jurisdiction. It enlarges and widens the jurisdiction of the Court, by a statutory implication and by a legal fiction. Therefore, in either way, the applicability of the provisions of the Employees' State Insurance Act, 1948, comes within the purview and jurisdiction of the Employees' Insurance Court, constituted under Section 74 of the Employees' State Insurance Act, 1948.

13. That apart, a Constitution Bench of the Apex Court, in BASANT KUMAR V. EAGLE ROLLING MILLS reported in AIR 1964 SC 1260, of course, not on a direct question as to the applicability of the provisions of the Employees' State Insurance Act, 1948, but while deciding the validity of a circular issued to give effect to the State Government’s notification to the beedi workers under the provisions of the Employees' State Insurance Act, 1948, which came to be challenged under Article 226 of the Constitution of India, held that the powers conferred under Article 226 of the Constitution of India, though, are very wide, these powers could not be suggested to decide the industrial disputes of such kind, as the same could be ventilated only by raising an industrial dispute under the provisions of the Industrial Disputes Act, or seeking a relief, if possible, under Sections 74 and 75 of the Employees' State Insurance Act, 1948.

14. S.Ramalingam,J., in an identical matter relating to beedi establishment, in a batch of writ petitions filed by several employees of the beedi industry, by order dated 9.7.1990 made in W.P.No.9196 of 19 82, etc. (V.ABDUL JABAR SAHIB AND SONS, GOAT MARK BEEDI, VELLORE V. THE STATE OF TAMIL NADU & 2 OTHERS), refused to entertain the plea of the employer that the provisions of the Employees' State Insurance Act, 1948 are not applicable to the employees therein, on the ground that the interest of the beedi workers are protected under the Beedi Workers Welfare Fund Act, 1996 and the Beedi Workers Welfare Cess Act, 1976.

15. In E.S.I.C. V. F.FIBRE BANGALORE P. LTD. reported in 1997 (II) LLJ 739 = AIR 1997 SC 244, the Apex Court has observed that the applicability of the provisions of the Employees' State Insurance Act, 194 8, could be decided only by the Employees’ Insurance Court, in an appropriate adjudication.

16. A.R.Lakshmanan,J. (as he then was), in THE E.S.I. V. T.O.D.H.W. C.S. SOCIETY reported in 1997 (II) LLJ 176, held that the question as to the applicability of the provisions of the Employees' State Insurance Act, 1948, could be decided only by the Employees’ Insurance Court.

17. A Division Bench of the Rajasthan High Court, in ALL INDIA ITDC EMPLOYEES’ UNION V. E.S.I.C. reported in 2002 (III) LLJ 917, following the ratio laid down in BASANT KUMAR V. EAGLE ROLLING MILLS reported in AIR 1964 SC 1260, held that the question as to the applicability of the Employees'

State Insurance Act, 1948, for a particular establishment or its ouster from its applicability under the provisions of the Act depends upon the determination of basic foundational facts and that has to be decided by the proper forum by raising dispute before the Employees' Insurance Court, and not by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

18. In view of the above well-settled principles laid down in the above cases that the Employees' Insurance Court alone can go into the question, even as to the applicability of the provisions of the Employees' State Insurance Act, 1948, I am of the considered opinion that it may not be proper for this Court to give a finding on that aspect.

19. Of course, in M/s.P.M.PATEL & SONS V. UNION OF INDIA reported in AIR 1987 SC 447, the Apex Court has held that provisions of the Employees Provident Funds Act and the Schemes cannot be implemented at all in respect of the beedi industry. Even though the Employees' State Insurance Act, 1948, is a social welfare legislation, since I have already held that it may not be proper for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to go into the applicability of the Employees' State Insurance Act, 1948, in the light of the ratio laid down in the decisions, referred to above, I do not propose to give any finding on this issue, as otherwise, it would prejudice the adjudication, which the petitioner may initiate before the Employees' Insurance Court.

20. Issues (i) and (ii) are answered accordingly.

21. In the result, except to give liberty to the petitioner to approach the competent Employees' Insurance Court for appropriate relief, no further order is required in this writ petition. This writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.No.336 of 1997 is also dismissed.

Index: Yes
Internet: Yes

Ksv/sasi

To:
1. Union of India
rep. by its Secretary
Department of Ministry of Labour
New Delhi.

2. Deputy Regional Director
Employees' State Insurance Corporation
Sub Regional Office
No.333, Cross Cut Road

Coimbatore-641 012.